

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

YVETTE MARIANO,

Plaintiff,

v.

LA FITNESS INTERNATIONAL, LLC, d/b/a a/k/a LA  
FITNESS, INC., LA FITNESS and LA FITNESS  
SPORTS CLUBS, and ANABELL SERANO a/k/a  
ANDY SERANO,

Defendants.

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X

No. 09-CV-1395 (LDW) (ETB)

**DECLARATION OF  
ANDREW S. BARON**

Pursuant to 28 U.S.C. § 1746, Andrew S. Baron declares:

1. I am an attorney admitted to practice before this Court and am an associate with Wollmuth Maher & Deutsch LLP (“WMD”), attorneys for Defendants LA Fitness International, LLC (“LA Fitness”) and Anibal Serrano (“Serrano”) (incorrectly named in the Amended Verified Complaint as “Anabell Serano”) (together with LA Fitness, “Defendants”) in the above-captioned action. I submit this declaration in support of Defendants’ Motion for Attorneys’ Fees and Costs Pursuant to Fed. R. Civ. P. 16(f). I am familiar with the facts and circumstances set forth herein.

2. In an August 4, 2009 Civil Conference Order (the “Order”), the Court ruled that Defendants’ counsel may make an application for counsel fees and costs arising from the failure of plaintiff’s counsel to appear at the Civil Conference that same day. Attached hereto as Exhibit A is a true and correct copy of the Order.

3. In a Minute Entry of that same day, the Court noted “Plaintiff no appearance; No communication with the Court.” Attached hereto as Exhibit B is a true and correct copy of the Minute Entry.

4. This Court previously issued an Order, dated April 10, 2009, directing all parties to appear for a Conference on August 4, 2009, at 11:00 a.m. (the "Scheduling Order"). Plaintiff's counsel was clearly aware of the Scheduling Order and Conference date as it served Defendants with an Order with Notice of Entry dated April 15, 2009 attaching the Scheduling Order. Attached hereto as Exhibit C is a true and correct copy of the Order with Notice of Entry dated April 15, 2009.

5. Plaintiff's counsel never contacted me or any other attorney from WMD to request an adjournment of the conference.

6. Nor did Plaintiff's counsel call, write, fax, or contact me or any other attorney from WMD in any manner to advise that none of its attorneys would be unable to attend the conference.

7. Following the conference, counsel for Plaintiff, Arnab Bhukta, Esq., contacted me via telephone and left a message blaming his non-attendance at the conference on a calendaring error.

8. Defendants seek compensation of 4.30 hours for my preparation for, travel time to and from, and attendance at the August 4, 2009 Conference and for 12.80 hours of work on the underlying motion.

9. I am a 2001 graduate of Fordham University School of Law and have been practicing law for over eight years. My normal hourly rate for all matters is \$425.00, including this action. Defendants have paid such rate for WMD's representation of them in this matter.


10. WMD is a medium-sized firm with approximately 25 attorneys.

11. Attached hereto as Exhibit D is a true and correct redacted copy of excerpted pages from WMD's time detail reports in this action.

12. As reflected in Exhibit D, Messrs. Dahill and Abrams billed 0.20 and 0.40 hours at \$550.00 and \$525.00 per hour, respectively. Defendants have also paid these rates for WMD's representation of them in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 10, 2009  
New York, New York

A handwritten signature in black ink, appearing to read "Andrew S. Baron", is written over a horizontal line.

Andrew S. Baron

## **EXHIBIT A**

TIME: 11:00 A.M.

DOCKET NO. CV-09-1395 CASE: MARIANO V. LA FITNESS INTERNATIONAL, INC.  
 NOT COURT REPORTED

INTERNATIONAL DECE  
U.S. DISTRICT COURT E.D.N.Y.

Motion FTK = 11.25 - 11.32.

LONG ISLAND OFFICE

Defendant

Andrew S. Baron

Next Final conference, 4/14/10 at 2:00 pm by phone

Next 3/31/10 conference phone  
Pre-Trial Order filed by List of Trial Witnesses  
+ Trial Exhibits

Defendant

The conference call should be made through the teleconference operator provided by your long-distance service (e.g., AT&T, MCI, Sprint).

1. Plaintiff(s) shall serve all automatic disclosure (Rule 26(a)(1)) by \_\_\_\_\_  
 Defendant(s) shall serve all automatic disclosure (Rule 26(a)(1)) by \_\_\_\_\_

2. The parties shall serve document production/interrogatory demands by \_\_\_\_\_  
The parties shall respond to outstanding document production/

Defendant's counsel may make application  
for counsel fees & costs & order  
arising from  
plaintiff's attorney's  
failure to  
appear today.

/s/ E. Thomas Boyle, U.S.M.J.

## **EXHIBIT B**

**From:** ecf\_bounces@nyed.uscourts.gov  
**Sent:** Tuesday, August 04, 2009 3:53 PM  
**To:** nobody@nyed.uscourts.gov  
**Subject:** Activity in Case 2:09-cv-01395-LDW-ETB Mariano v. LA Fitness International, LLC et al  
Pretrial Conference - Initial

**Follow Up Flag:** Follow up  
**Flag Status:** Red

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of New York

### Notice of Electronic Filing

The following transaction was entered on 8/4/2009 at 3:52 PM EDT and filed on 8/4/2009

**Case Name:** Mariano v. LA Fitness International, LLC et al

**Case Number:** 2:09-cv-01395-LDW-ETB

**Filer:**

**Document Number:** 10

### Docket Text:

Minute Entry for proceedings held before Magistrate Judge E. Thomas Boyle: Plaintiff No appearance; No communication with the court; Defendant Andrew S. Baron; Initial Pretrial Conference held on 8/4/2009, ( Discovery due by 3/11/2010 including experts., Proposed Pretrial Order due by 3/31/2010 List of Trial Witnesses & Trial Exhibits., Final Pretrial Conference by phone set for 4/14/2010 02:00 PM before Magistrate Judge E. Thomas Boyle.) The conference call should be made through the teleconference operator provided by your long-distance service (e.g., AT&T, MCI, Sprint). Defendant's counsel may make application for counsel fees & costs arising from plaintiff's attorney's failure to appear today. (So ordered by Mag. Judge Boyle on 8/4/09). (Tape #11:25-11:32.) (Lundy, Lisa)

2:09-cv-01395-LDW-ETB Notice has been electronically mailed to:

Anthony C. Donofrio adonofrio@triallawyerny.com, abhukta@triallawyerny.com,  
cduncan@triallawyerny.com, crussell@triallawyerny.com, khalpern@triallawyerny.com

William F. Dahill wdahill@wmd-law.com

Andrew Steven Baron abaron@wmd-law.com

**2:09-cv-01395-LDW-ETB Notice will not be electronically mailed to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP NYEDStamp\_ID=875559751 [Date=8/4/2009] [FileNumber=4599156-0] [0314f2e85fa7b0110b98837a8c3775980a113fd6e4baa43e1f521a027d750af34ddf6bf1d667fddd680922143bca8f066640957d3053a2e6cd0395cb7b2c48a9]]

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YVETTE MARIANO,

Plaintiff,

No.: 09-CV-1395 (LDW)  
(ETB)

-against-

LA FITNESS INTERNATIONAL, LLC, d/b/a a/k/a  
LA FITNESS, INC, LA FITNESS and LA FITNESS  
SPORTS CLUBS, and ANABELL SERANO a/k/a  
ANDY SERANO,

**ORDER WITH NOTICE OF  
ENTRY**

Defendants.  
-----X

**COUNSELORS:**

PLEASE TAKE NOTICE, that the annexed is a true and complete copy of  
an Order entered in the office of the Clerk of the Eastern District of New York on  
April 10, 2009.

DATED: Massapequa, New York  
April 15, 2009

Yours, etc.

By: 

\_\_\_\_\_  
Anthony C. Donofrio  
**LAW OFFICES OF  
ANTHONY C. DONOFRIO, PLLC**  
Attorneys for Plaintiff  
**YVETTE MARIANO**  
5518 Merrick Road  
Massapequa, New York 11758  
(516) 797-9797

TO: WOLLMUTH MAHER & DEUTSCH  
Attorneys for Defendant LA FITNESS  
500 Fifth Avenue  
New York, NY 10110  
(212)382-3300

ANDY SERANO  
at LA FITNESS  
1111 Marcus Avenue  
New Hyde Park, NY 11042

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
YVETTE MARIANO

Plaintiff(s),

ORDER

-against-

CV 09-01395 (LDW)(ETB)

LA FITNESS INTERNATIONAL, LLC

Defendant(s),  
-----X

The above-captioned case has been referred to E. Thomas Boyle, Magistrate Judge, for purposes of scheduling discovery, resolution of discovery disputes, settlement conferences and any other purposes set forth at 28 U.S.C. § 636(b)(1)(A).

An initial scheduling conference will be held in this case at 10:00 a.m. on August 4, 2009 before Judge Boyle, in Courtroom 830, Alfonse M. D'Amato U.S. Courthouse, Central Islip, New York. All counsel must be present unless excused by the court. Counsel for plaintiff(s) is obligated to serve a copy of this order on each defendant.

**COUNSEL FOR PLAINTIFF(S) OR PLAINTIFF PRO SE IS OBLIGATED TO SERVE A COPY OF THIS ORDER ON EACH DEFENDANT.**

**1. Planning Meeting and Automatic Disclosure - Rule 26(f) and (a)(1), Fed. R. Civ. P.**

The parties are required to comply with the automatic disclosure rules contained at Rule 26(a)(1) of the Federal Rules of Civil Procedure. The parties are directed to provide the required information within fourteen (14) days after the planning meeting of the parties, as required by Rule 26(f) of the Federal Rules of Civil Procedure. This planning meeting should occur as soon as practicable, but no later than twenty-one (21) days before the initial scheduling conference.

**2. File a Proposed Discovery Plan - Rule 26(f), Fed. R. Civ. P.**

A proposed discovery plan should be filed with the Court within fourteen (14) days after the planning meeting.

The proposed discovery order should include the following:

1. Deadline for motions to amend pleadings including joinder of additional parties.
2. Date for service of initial document production demands and interrogatory requests with responses served within thirty (30) days.
3. Deadline for seeking approval to file any motion for summary judgment.
4. Date for the submission of the pre-trial order.
5. The discovery completion date.
6. Any agreement between the parties relating to the disclosure and discovery of electronically stored information ("ESI"), including the form(s) in which it is to be produced.
7. Any agreement between the parties relating to claims of privilege, including the

procedure to follow for returning inadvertently produced materials.

### **3. Court Intervention**

The parties are advised that discovery demands must be served at least forty-five (45) days in advance of the discovery completion date to support a request for court intervention. Any motion for court intervention relating to discovery must be filed at least thirty (30) days prior to discovery completion.

### **4. Modification of a Scheduling Order**

Any request for modification of a scheduling order must be filed and served prior to the discovery completion date. A scheduling order will be modified by the Court only upon a showing of good cause. Fed. R. Civ. P. 16(b). Extensions -- not exceeding a total of 120 days-- shall be granted based upon good cause. Any further modification shall only be granted upon a showing of manifest injustice. Fed. R. Civ. P. 16(e).

### **5. Request for a Conference**

Any request for a conference with the Court shall be in writing and shall set forth the reason for the request and at least two (2) dates on which all parties are available.

### **Individual Practices**

The individual rules of the Court can be found in the New York Law Journal ([www.nylj.com](http://www.nylj.com)), at the Eastern District of New York web site at "[www.nyed.uscourts.gov](http://www.nyed.uscourts.gov)" or copies may be obtained from the Clerk's Office of the Eastern District of New York.

**ELECTRONIC CASE FILING (ECF) - All documents filed with the court shall be filed electronically, in compliance with Administrative Order 2004-08, dated June 22, 2004.**

**SO ORDERED:**

Dated: Central Islip, New York  
April 10, 2009

/s/ E. Thomas Boyle  
E. THOMAS BOYLE  
United States Magistrate Judge

AFFIRMATION OF SERVICE

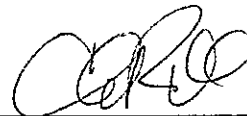
STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NASSAU     )

I, Chris Russell, hereby affirms the following:

1. I am not a party to the action and am over 18 years of age;
2. I reside in Suffolk County, New York;
3. On April 15, 2009 I served the within ORDER WITH NOTICE OF ENTRY, depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service, within the New York State, addressed to each of the following persons at the last known address set forth after each name:

WOLLMUTH MAHER & DEUTSCH  
Attorneys for Defendant LA FITNESS  
500 Fifth Avenue  
New York, NY 10110  
(212)382-3300

ANDY SERANO  
at LA FITNESS  
1111 Marcus Avenue  
New Hyde Park, NY 11042

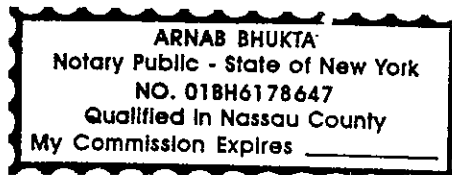


Chris Russell

Sworn to before me this  
15th day of April, 2009



Notary Public



## **EXHIBIT D**

**Time Listing**

**Invoice #:** 17571  
**Invoice Date:** September 9, 2009  
**Client #:** 5207  
**Matter #:** 5207-002

DATE	LAWYER	HOURS	RATE	AMOUNT
Aug-04-09	ASB	4.30	\$425.00	1,827.50
Aug-24-09	ASB	2.80	\$425.00	1,190.00
Aug-26-09	ASB	4.80	\$425.00	2,040.00
Aug-27-09	WFD	0.20	\$550.00	110.00
	ASB	2.00	\$425.00	850.00
Aug-31-09	MLA	0.40	\$525.00	210.00
	ASB	2.60	\$425.00	1,105.00
TOTAL HOURS		18.90		\$7,940.00